



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 26 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL

7009 1680 0000 7672 7457

16J

RETURN RECEIPT REQUESTED

Mr. Herbert J. Roder
EPG2, LLC
4267 East Konker Road
Port Clinton, Ohio 43452

Re: *Request for Information under Section 308 of the Clean Water Act*
(Docket No. V-404-308-13-23)

Dear Mr. Roder:

The U. S. Environmental Protection Agency (EPA) is issuing this request for information to you and EPG2, LLC, a limited liability company located in Port Clinton, Ohio (EPG2, or you) pursuant to the authority granted to it under Section 308(a) of the Clean Water Act (CWA), 33 U.S.C. § 1318(a) and the regulations promulgated thereunder. This request regards alleged violations of Section 301 of the CWA, 33 U.S.C. § 1311, at your property north of Front Street in Section 20, Township 7 North, Range 16 East, Erie Township, Ottawa County, Ohio. Please note that EPA is aware that you were previously issued a "Cease and Desist Order" by the U.S. Army Corps of Engineers-Buffalo District, dated January 23, 2013, regarding this matter.

Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides that whenever required to carry out the objective of the CWA, including determining whether any person is in violation of the CWA, the Administrator of EPA may require that person to provide such information as may reasonably be required to make that determination.

Accordingly, pursuant to the authority vested in the Administrator, duly redelegated to the Water Division Director of EPA Region 5, you are to respond and provide information pertaining to the enclosed "Request for Information" no later than 30 days from receipt of this letter. The requested information includes any produced by your contractors and their subcontractors.

Please submit the information requested in the accompanying document with the certification provided therein certifying that all representations contained therein are true and accurate to the best of your knowledge and belief. You should exercise care to assure that responses are complete and accurate, because Section 309(c)(2) of the CWA, 33U.S.C. § 1319(c)(2), provides for the imposition of criminal penalties where false information is knowingly provided to the Agency. This Information Request is not subject to the approval requirements of the Paperwork

Reduction Act of 1980, 44 U.S.C. §§ 3501-3520, because it seeks information relevant to an ongoing enforcement action.

If you have any questions, please contact Mr. Gregory T. Carlson, Enforcement Officer, at 312/886-0124.

Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde", with a long horizontal flourish extending to the right.

Tinka G. Hyde
Director, Water Division

Enclosures:

Information Request
Photo attachment
Regulatory definition of "Waters of the United States"

cc: Joseph Kassler (w/encls.), USACOE-Buffalo District, Buffalo, NY
Heather Allamon (w/encls.), OEPA, 347 N. Dunbridge Rd., Bowling Green, OH 43402
R. Guenther, ORC (C-14J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Herbert Roder and
EPG2, LLC,
Port Clinton, Ohio,**

Respondents.

)
) **REQUEST PURSUANT TO SECTION**
) **308 OF THE CLEAN WATER ACT**
) **(CWA), 33 U.S.C. §1318(a)**
)
)
) **DOCKET NO. V-404-308-13-23**
)

The following request is made pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by the above referenced statute and duly redelegated to the undersigned Director, Water Division. This request for information pertains to the alleged unauthorized discharge of dredged or fill material or both into waters of the United States in conjunction with weapons testing at property north of Front Street, in Section 20, Township 7 North, Range 16 East, Erie Township, Ottawa County, Ohio ("site"). See Exhibit #1 for an illustration of the site.

INSTRUCTIONS

Please provide the information described below within 30 days of receipt of this request, under an authorized signature to the address below:

Director, Water Division
U.S. EPA
77 West Jackson Boulevard
Chicago, Illinois 60604-3590 (Attention: G. Carlson (WW-16J)).

The information requested herein must be provided notwithstanding its possible characterization as confidential information or trade secret. You may, if you or EPG2 desire, assert a business confidentiality claim covering all or part of the information requested, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such claim will be disclosed by EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA it may be made available to the public by EPA without further notice to you.

EPA requests this information under Section 308(a) of the CWA, 33 U.S.C. § 1318(a), which provides that: "Whenever required to carry out the objective of this Act, the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment and methods (including where appropriate, biological monitoring methods), (iv) sample such effluents and (v) provide such other information as he may reasonably require; and the Administrator or his authorized representative, upon presentation of his credentials shall have a right of entry to any

premises in which an effluent source is located or in which any records are located, and may at reasonable times have access to and copy any records and sample any effluents."

The information requested below must be submitted under an authorized signature with the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to 18 U.S.C. §§ 1001 and 1341.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520, because it seeks information relevant to an ongoing enforcement action.

REQUEST FOR INFORMATION

1. Delineate the extent of your current or past property ownership with regard to the site. Provide any property deeds, Plats of Survey, Certified Survey Maps, titles, easements, and property and real estate tax bills, or any other documentation that illustrates your property ownership or describes its location. For the purposes of answering this question, the time frame of your response is any time after you first obtained full or partial ownership interest in the site.

2. Provide copies of all documents and information you possess which physically describe the site, including, but not limited to:

- A) surveys, both topographic or boundary;
- B) soil borings, samples or descriptions;
- C) vegetation surveys;
- D) site hydrological surveys, e.g., plans and data characterizing ground, surface or storm water flows;
- E) engineering design or site plans (including planning, zoning or development plans);
- F) all site imagery, including satellite, aerial or ground based photographs, digital products, videotape or equivalent formats or platforms;
- G) delineations or determinations of "waters of the United States," including wetlands and streams. This includes all field notes and is not limited to formal reports; and
- H) any flood way or flood plain documentation.

3. For the site, provide copies of all documents that characterize any movement or placement of sand, silt, clay, rock, organic debris (i.e., vegetation that is alive or dead), topsoil, subsoil, spoil, fill or dredged material, including, but not limited to rip rap, erosion control structures, filling,

grading, trenching, soil or vegetation stockpiling (even if only temporary), clearing of vegetation, dredging, culvert placement, dike or dam construction, access road construction, drag-lining, bulldozing or any other method of moving earthen material or organic debris.

If you have no records, use a narrative description in characterizing the sequence and methods of site earth work and vegetative clearing, e.g., using scaled drawings to clearly delineate site activities.

4. For the work accomplished in Question No. 3, above, identify the number of days and dates during which each work event occurred.
5. Based on any earthmoving or organic debris moving activities conducted at the site, identify the types of machinery used to move or place sand, silt, clay, rock, topsoil, subsoil or fill, dredged, or organic material, by model number and year, if possible.
6. Provide a list of all persons, contractors, or sub-contractors you or your agent may have hired or compensated for site work involving construction and development of the recreational pond and a description of the work performed by each listed party.
7. Provide copies of all documents that memorialize or describe the relationship between you and any person or contractor you may have hired or compensated for site work involving the movement or placement of sand, silt, clay, rock or fill, dredged or organic materials in any part of the site. Documents may include, but are not limited to contracts, contractor payments, work logs or time records, invoices, canceled checks, receipts, or bills of sale.
8. Provide copies of all documents concerning any efforts you made or directed to determine whether the site or any portion thereof contained wetlands or other waters of the United States as defined under Federal regulations found at 40 C.F.R. Part 232 and 33 C.F.R. Part 328 (see Exhibit #2 for a copy of the "waters of the United States" regulatory definition). Identify all persons involved in this determination by name, title and address. Provide any field notes, maps and surveys used in this effort.
9. Provide copies of all documents relating to whether you have ever applied for or received a federal permit at the site, including nationwide, regional, general, individual or after-the-fact permits, issued pursuant to the CWA, including, but not limited to Section 404. Documents may include, but are not limited to, permits, permit application materials and related correspondence, or specific informational sources that address CWA programs. This includes, but is not limited to informational, educational or regulatory materials regarding Section 404 of the CWA from any source.
10. Provide copies of all documents relating to whether you have ever applied for or received a permit issued pursuant to Ohio state law at the site, including, but not limited to the Ohio Environmental Protection Agency or OEPA. Documents may include, but are not limited to permits, permit application materials and related correspondence, or specific informational, educational or regulatory sources that address Ohio environmental laws addressing land, water or air.


11. Provide copies of all documents relating to whether you have ever applied for or received a permit issued pursuant to the authorities of Ohio County government or Ohio Townships or any sub unit of local government at the site, including utility providers and planning and zoning departments. Documents may include, but are not limited to, permits, permit application materials and related correspondence, or specific informational, educational or regulatory sources that address local environmental or land use related programs.

12. Provide copies of all documents that identify the managing partner or owner of the EPG2 limited liability company (in other words, the 'liable' partner within the limited liability company). If there are multiple partners in the company, please identify the name(s) and address(es) of all of the additional partners of EPG2, LLC and describe their involvement or ownership of the company.

13. Provide copies of all other information or documents that you deem relevant to this matter.

Please be advised that the submission of false statements may subject you to federal prosecution under 18 U.S.C. § 1001 and that this or any other failure to comply with the requirements of Section 308 as requested by EPA may result in an enforcement action under Section 309 of the CWA, which provides for specified civil or criminal penalties. EPA has the authority to use the information requested herein in an administrative, civil or criminal action.

Date: 4/26/2013


Tinka G. Hyde
Director, Water Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Google Earth Pro

feet 3000
km 1



Exhibit I

Image Date: June 2012

Site =

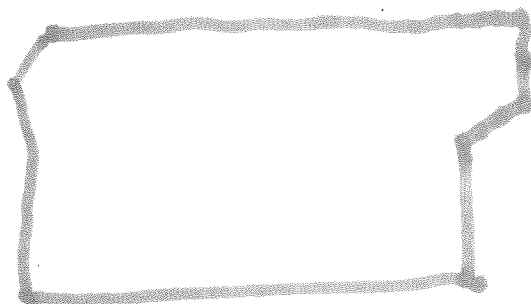


Exhibit 2

Corps of Engineers, Dept. of the Army, DoD

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for the hearing. Notice shall also be given to all Federal agencies affected by the proposed action, and to state and local agencies and other parties having an interest in the subject matter of the hearing. Notice shall be sent to all persons requesting a hearing and shall be posted in appropriate government buildings and provided to newspapers of general circulation for publication. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition.

(b) The notice shall contain time, place, and nature of hearing, the legal authority and jurisdiction under which the hearing is held; and location of and availability of the draft environmental impact statement or environmental assessment.

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

Sec.

328.1 Purpose.

328.2 General scope.

328.3 Definitions.

328.4 Limits of jurisdiction.

328.5 Changes in limits of waters of the United States.

AUTHORITY: 33 U.S.C. 1344.

SOURCE: 51 FR 41250, Nov. 13, 1986, unless otherwise noted.

§ 328.1 Purpose.

This section defines the term "waters of the United States" as it applies to the jurisdictional limits of the authority of the Corps of Engineers under the Clean Water Act. It prescribes the policy, practice, and procedures to be used in determining the extent of jurisdiction of the Corps of Engineers concerning "waters of the United States." The terminology used by section 404 of the Clean Water Act includes "navigable waters" which is defined at section 502(7) of the Act as "waters of the United States including the territorial seas." To provide clarity and to avoid confusion with other Corps of Engineer regulatory programs, the term "waters of the United States" is used throughout 33 CFR parts 320 through 330. This section does not apply to authorities under the Rivers and Harbors Act of

1899 except that some of the same waters may be regulated under both statutes (see 33 CFR parts 322 and 329).

§ 328.2 General scope.

Waters of the United States include those waters listed in § 328.3(a). The lateral limits of jurisdiction in those waters may be divided into three categories. The categories include the territorial seas, tidal waters, and non-tidal waters (see 33 CFR 328.4 (a), (b), and (c), respectively).

§ 328.3 Definitions.

For the purpose of this regulation these terms are defined as follows:

(a) The term *waters of the United States* means

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purpose by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under the definition;

(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section;

(6) The territorial seas;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section.

(8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of

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an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

(b) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(c) The term *adjacent* means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

(d) The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

(e) The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terres-

33 CFR Ch. II (7-1-11 Edition)

trial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(f) The term *tidal waters* means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

[51 FR 41250, Nov. 13, 1986, as amended at 58 FR 45036, Aug. 25, 1993]

§328.4 Limits of jurisdiction.

(a) *Territorial Seas.* The limit of jurisdiction in the territorial seas is measured from the baseline in a seaward direction a distance of three nautical miles. (See 33 CFR 329.12)

(b) *Tidal waters of the United States.* The landward limits of jurisdiction in tidal waters:

(1) Extends to the high tide line, or

(2) When adjacent non-tidal waters of the United States are present, the jurisdiction extends to the limits identified in paragraph (c) of this section.

(c) *Non-tidal waters of the United States.* The limits of jurisdiction in non-tidal waters:

(1) In the absence of adjacent wetlands, the jurisdiction extends to the ordinary high water mark, or

(2) When adjacent wetlands are present, the jurisdiction extends beyond the ordinary high water mark to the limit of the adjacent wetlands.

(3) When the water of the United States consists only of wetlands the jurisdiction extends to the limit of the wetland.

§328.5 Changes in limits of waters of the United States.

Permanent changes of the shoreline configuration result in similar alterations of the boundaries of waters of the United States. Gradual changes which are due to natural causes and are perceptible only over some period of time constitute changes in the bed of a waterway which also change the boundaries of the waters of the United States. For example, changing sea levels or subsidence of land may cause